

### **REMARKS**

This Amendment and Response is filed in connection with the Final Office Action mailed on Feb. 19, 2009. Please consider the above-identified patent application in view of the amendments and remarks provided herein.

No claims are amended herein, no claims are canceled, and claims 29-34 are newly added; as a result, claims 1, 3-7, 15, 17-22, and 24-34 are pending in this application.

#### **Examiner Interview Summary**

The Applicant would like to thank Examiner Ben C. Wang for the courtesy of a phone interview conducted on March 3, 2009 and March 4, 2009 between the Examiner and the Applicant's representative, Jim H. Salter. During the interviews, the priority claim made in the present application was discussed. This Amendment is responsive to the Final Office Action and the matters discussed during the interviews.

#### **Request for Reconsideration of the Finality of the Rejections in the Last Office Action**

As argued in the response to the non-final Office Action mailed on Sep. 11, 2008, the Applicant presented clear evidence that the present application is a continuation-in-part patent application claiming priority to U.S. Patent Application Serial No. 09/309,147; filed May 10, 1999 by the same inventor, Robert Zeidman, as the present application. The parent priority U.S. Patent Application Serial No. 09/309,147 has since issued as U.S. Patent No. 6,934,947 (herein the '947 patent). The Applicant provided a copy of the preliminary amendment timely filed on Jan. 20, 2004 in the present application that claimed priority to the application issued as the above-referenced U.S. Patent (the '947 patent). The Applicant properly requested that the Liu and Gauthier references be withdrawn as prior art references from the present patent application as these references post-date the priority date of the present application. However, the current Final Office Action was still issued basing its rejections primarily on the Liu and Gauthier references.

In the above-referenced Examiner Interviews, the Applicant reminded the

Examiner that the Liu and Gauthier references were being improperly used as prior art references because they clearly post-date the priority date of the present application (i.e., May 10, 1999). The Examiner rejected the Applicant's priority claim, arguing that the preliminary amendment filed on Jan. 20, 2004 in the present application did not meet the alleged requirement that the priority reference to the prior application must be submitted within sixteen months from the filing date of the prior-filed application. However, the Applicant respectfully submits that this assertion is contrary to the applicable Rules, specifically 37 CFR 1.78 (a)(2)(ii). This Rule states the following:

This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. (37 CFR 1.78 (a)(2)(ii), emphasis added).

The Examiner acknowledged during the Examiner Interview that the preliminary amendment filed on Jan. 20, 2004 claiming priority to the application issued as the '947 patent was timely filed within four months from the actual filing date of the later-filed application. The later-filed application (i.e. the present application) was filed on October 20, 2003. The priority claim reference was therefore properly submitted during the pendency of the later-filed application and within the later of four months from the actual filing date of the later-filed application. Thus, the Applicant's priority claim is proper and should be applied to the art currently of record.

Further, the priority patent (the '947 patent) supports the corresponding claim elements alleged to be taught by Gauthier and Liu. In particular, the Final Office Action at page 5 states:

However, in an analogous art of '*Automatic Generation and Targeting of Application Specific Operating Systems and Embedded Systems Software*', Gauthier discloses synthesizing source code (e.g., Sec. 4.2 - Synthesis of Application Specific OS and SW targeting) from commands embedded in source code.

The '947 patent, as a priority document for the present application, provides

support for this claim element alleged to be taught by Gauthier. For example, see the '947 patent at col. 4, lines 26-49. As explained above, the '947 patent pre-dates the Gauthier reference. Thus, it is improper to rely on Gauthier to reject claim elements supported by a disclosure in a prior-filed priority document.

The Final Office Action at page 7 further states:

However, in an analogous art of *Timed Multitasking for Real-Time Embedded Software*, Liu discloses specifying t init-tasks that are executed only once upon initial execution of a task scheduler, t being less than or equal to n.

The '947 patent, as a priority document for the present application, also provides support for this claim element alleged to be taught by Liu. For example, see the '947 patent at col. 3, lines 24-31. As explained above, the '947 patent pre-dates the Liu reference. Thus, it is improper to rely on Liu to reject claim elements supported by a disclosure in a prior-filed priority document.

Again, the Applicant respectfully requests that the Liu and Gauthier references be withdrawn as prior art references from the present patent application as these references post-date the proper priority date of the present application and the priority patent supports the corresponding claim elements. Because the current Final Office Action was issued improperly basing its rejections primarily on the Liu and Gauthier references, the Applicant respectfully requests reconsideration of the finality of the rejections in the current Final Office Action. The Applicant respectfully requests withdrawal of the finality of the rejections in the current Final Office Action.

#### *Request for Entry of New Claim*

The Applicant has added new claims 29-34 by this Amendment. These new claims are not anticipated or rendered obvious by the art currently of record for the reasons set forth in prior amendments with respect to claims 1, 15, and 22.

Therefore, the Applicant respectfully submits that for at least the reasons set forth above and previously submitted, the pending claims are patentable over the art of record. The Applicant respectfully requests withdrawal of the outstanding claim rejections.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Jim H. Salter at 408-406-4855 to facilitate prosecution of this application.

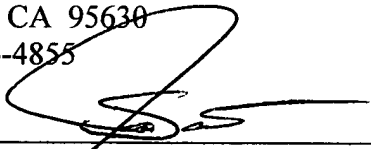
Respectfully submitted,

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Date March 18, 2009

By   
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18th day of March, 2009.

Jim H. Salter

Name

  
Signature